

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MICHAEL JOHN MOE,

Petitioner,

3:14-cv-00410-RCJ-WGC

VS.

ORDER

BRIAN E. WILLIAMS, SR., *et al.*,

Respondents.

1

In this habeas corpus action, brought *pro se* by Nevada prisoner Michael John Moe, on June 25, 2015, the court ruled on a motion to dismiss filed by the respondents, and in that order found the following claims in Moe's habeas petition to be unexhausted in state court:

18 Grounds 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 (except to
19 the extent based on trial counsel's alleged failure to investigate witnesses Donnelly,
20 Duncan and Catron), 21, 22, 23, 24(2) (except to the extent based on trial counsel's
21 alleged failure to call Pam Metzger to testify), 24(3) (except to the extent based on
22 trial counsel's alleged failure to encourage Moe to testify at trial), 24(4), 24(5), 24(6),
23 24(7), 24(8), 24(9) (except to the extent based on trial counsel's alleged failure to
24 investigate witnesses Donnelly, Duncan and Catron), 24(10), 24(11), 24(12), 24(13),
25 24(14), 24(15), 24(16) (except to the extent based on trial counsel's alleged failure to
26 offer at trial, as evidence, "the advertisement flyer showing sale jackets from Cabela's
store and [the receipt from] Metzger's gambling tournament at Boomtown"), 24(17),
24(18), 24(19), 24(20), 24(21) (except to the extent based on trial counsel's alleged
failure to "investigate the prosecutor's hearsay remarks regarding Game Stop
contacting Cabela's about Pam Metzger selling videotapes stolen by Moe"), 24(22)
(except to the extent based on trial counsel's alleged failure to object to "the
prosecutor's hearsay remarks regarding Game Stop contacting Cabela's about Pam
Metzger selling videotapes stolen by Moe," and to offer evidence that one of his prior
convictions was the result of a trial at which he was not present), 24(23) (except to the
extent based on trial counsel's alleged failure to object to "the prosecutor's hearsay

1 remarks regarding Game Stop contacting Cabela's about Pam Metger selling
 2 videotapes stolen by Moe"), 24(24) (except to the extent based on trial counsel's
 3 alleged failure to object to "the prosecutor's hearsay remarks regarding Game Stop
 4 contacting Cabela's about Pam Metger selling videotapes stolen by Moe"), 24(25),
 5 24(26) (except to the extent based on trial counsel's alleged failure to object "when
 6 the court ordered there were sixteen minutes left to finish the jury trial after the State's
 7 case"), 24(27), 24(28), 24(29), 24(30), 24(31), Ground 24(32) (except to the extent
 8 based on trial counsel's alleged failure to play "the videotape from Cabela's security
 9 office to impeach Officer David Robertson's supplemental report," and to
 10 cross-examine Donnelly, Duncan, and Catron), 25 (except to the extent of Moe's
 11 exhausted claims), 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42,
 12 and 44.

8 *See Order entered June 25, 2015 (ECF No. 20).* With respect to those claims, the court granted Moe
 9 time to make an election to: (1) file a declaration stating that he wishes to abandon all the claims
 10 found by this court to be unexhausted, (2) file a motion for a stay, requesting that this case be stayed
 11 while he exhausts his unexhausted claims, or (3) file a declaration stating that he wishes to voluntarily
 12 dismiss his entire habeas petition in this case without prejudice. *See id.*

13 On July 30, 2015, Moe filed a motion for stay, requesting a stay of the action, to allow him to
 14 return to state court to exhaust his unexhausted claims (ECF No. 21). The court denied that motion
 15 on December 2, 2015, ruling that Moe did not show good cause for his failure to exhaust his
 16 unexhausted claims in his earlier state-court proceedings. *See Order entered December 2, 2015 (ECF*
 17 *No. 24).* The court then granted Moe an opportunity to file a notice of abandonment of claims,
 18 stating that he wishes to abandon the unexhausted claims. *See id.* The court warned that if Moe did
 19 not file a notice of abandonment of his unexhausted claims within the time allowed, this action would
 20 be dismissed, without prejudice, pursuant to *Rose v. Lundy*, 455 U.S. 509 (1982). *See id.* Moe was
 21 to file the notice of abandonment of claims by February 29, 2016. *See id.; see also Order entered*
 22 *January 27, 2016 (ECF No. 27).*

23 On March 3, 2016, Moe filed a motion for reconsideration, requesting that the court
 24 reconsider its denial of his motion for stay (ECF No. 28). The court denied that motion in an
 25 order entered April 12, 2016 (ECF No. 31). In that order, the court granted Moe more time to file
 26 the notice of abandonment of his unexhausted claims.

1 On May 18, 2016, Moe filed a motion to dismiss the claims found by the court to be
2 unexhausted (ECF No. 32). The court will grant that motion, and will dismiss Moe's unexhausted
3 claims.

4 Also on May 18, 2016, Moe filed a motion for leave to amend his petition, to clarify his
5 exhausted claims (ECF No. 33). On May 31, 2016, respondents filed a response to Moe's motion for
6 leave to amend, pointing out that Moe did not submit, with his motion, his proposed amended
7 petition, as required by Local Rule LR 15-1(a). The court will set a schedule for petitioner to file his
8 proposed amended petition, for respondents to further respond to the motion for leave to amend, and
9 for Moe to reply.

10 **IT IS THEREFORE ORDERED** that petitioner's Motion to Dismiss (ECF No. 32) is
11 **GRANTED**. The following claims in petitioner's habeas corpus petition (ECF No. 4) are dismissed:

12 Grounds 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 (except to
13 the extent based on trial counsel's alleged failure to investigate witnesses Donnelly,
14 Duncan and Catron), 21, 22, 23, 24(2) (except to the extent based on trial counsel's
15 alleged failure to call Pam Metzger to testify), 24(3) (except to the extent based on
16 trial counsel's alleged failure to encourage Moe to testify at trial), 24(4), 24(5), 24(6),
17 24(7), 24(8), 24(9) (except to the extent based on trial counsel's alleged failure to
18 investigate witnesses Donnelly, Duncan and Catron), 24(10), 24(11), 24(12), 24(13),
19 24(14), 24(15), 24(16) (except to the extent based on trial counsel's alleged failure to
20 offer at trial, as evidence, "the advertisement flyer showing sale jackets from Cabela's
21 store and [the receipt from] Metzger's gambling tournament at Boomtown"), 24(17),
22 24(18), 24(19), 24(20), 24(21) (except to the extent based on trial counsel's alleged
23 failure to "investigate the prosecutor's hearsay remarks regarding Game Stop
24 contacting Cabela's about Pam Metzger selling videotapes stolen by Moe"), 24(22)
25 (except to the extent based on trial counsel's alleged failure to object to "the
26 prosecutor's hearsay remarks regarding Game Stop contacting Cabela's about Pam
Metzger selling videotapes stolen by Moe," and to offer evidence that one of his prior
convictions was the result of a trial at which he was not present), 24(23) (except to the
extent based on trial counsel's alleged failure to object to "the prosecutor's hearsay
remarks regarding Game Stop contacting Cabela's about Pam Metzger selling
videotapes stolen by Moe"), 24(24) (except to the extent based on trial counsel's
alleged failure to object to "the prosecutor's hearsay remarks regarding Game Stop
contacting Cabela's about Pam Metzger selling videotapes stolen by Moe"), 24(25),
24(26) (except to the extent based on trial counsel's alleged failure to object "when
the court ordered there were sixteen minutes left to finish the jury trial after the State's
case"), 24(27), 24(28), 24(29), 24(30), 24(31), Ground 24(32) (except to the extent
based on trial counsel's alleged failure to play "the videotape from Cabela's security
office to impeach Officer David Robertson's supplemental report," and to
cross-examine Donnelly, Duncan, and Catron), 25 (except to the extent of Moe's
exhausted claims), 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42,
43, and 44.

1 **IT IS FURTHER ORDERED** that petitioner shall, by **August 26, 2016**, file his proposed
2 first amended petition for writ of habeas corpus. After petitioner files his proposed amended petition,
3 respondents shall have **20 days** to further respond to petitioner's motion for leave to amend.
4 Thereafter, petitioner shall have **20 days** to file a reply regarding his motion for leave to amend. **The**
5 **court will not look favorably upon any motion to extend this schedule for the further briefing**
6 **of petitioner's motion for leave to amend.**

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8 Dated this 28th day of June, 2016.

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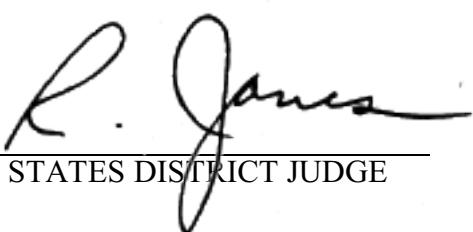
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UNITED STATES DISTRICT JUDGE